

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

19-CR-1991JB

ANTONIO CARRILLO,

Defendant.

**UNOPPOSED MOTION TO CONTINUE NOVEMBER 18, 2019 TRIAL SETTING AND
EXTEND MOTIONS DEADLINE**

Defendant Antonio Carrillo, by and through undersigned counsel, submits this Motion to Continue the November 18, 2019 Trial Setting and Extend Motions Deadline. Defendant requests a 45-day continuance of the trial date and for the Court to extend the motions deadline in accordance with the trial continuance. In support of this motion, Defendant states:

1. On July 15, 2019, Mr. Carrillo was arraigned and pleaded not guilty to an indictment charging with one count of transmitting in interstate or foreign commerce a communication containing any threat to kidnap any person or any threat to injure the person of another, in violation of 18 U.S.C. § 875(c).

2. After arraignment, the Parties engaged in plea negotiations and had tentative discussions regarding a resolution of the case. The Court granted multiple short continuances of the trial date to facilitate the plea negotiation process.

3. On October 30, 2019, Defendant's previously appointed counsel filed a motion requesting leave to withdraw as attorney for Mr. Carrillo. The Court granted the motion on November 6, 2019. On the same day, the Court also granted a motion to continue the November

12, 2019 trial date until November 18, 2019. Undersigned counsel, Marshall J. Ray, was appointed on November 7, 2019. Once Mr. Ray was appointed, he and Mr. Carrillo have been in communication with one another, but Mr. Ray has not yet received a working copy of the discovery for this case. Without an opportunity to review the discovery, Mr. Carrillo's new counsel is not in a position to advise Mr. Carrillo regarding the case or to prepare for trial.

4. To render effective assistance of counsel, Mr. Ray requires a continuance to allow time to receive and review discovery and evaluate any potential motions, including dispositive motions, motions in limine, and analyze jury instructions.

5. Mr. Carrillo's right to the effective assistance of counsel includes adequate time to prepare a defense. Newly appointed defense attorney Mr. Ray has immediately begun working on this matter in a diligent fashion, but more than one week is necessary adequately to evaluate grounds for motions and prepare for trial. As the Eleventh Circuit has recognized,

Implicit in this right to counsel is the notion of adequate time for counsel to prepare the defense: "Disposition of a request for continuance . . . is made in the discretion of the trial judge, the exercise of which will ordinarily not be reviewed. But the denial of opportunity for appointed counsel to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment."

United States v. Verderame, 51 F.3d 249, 252 (11th Cir. 1995) (quoting *Avery v. Alabama*, 308 U.S. 444, 446, 60 S.Ct. 321, 322 (1940)). The defense of this case does not appear to pose a complex set of facts. Nevertheless, the charged offense involves criminal speech, which presents difficult legal questions. Mr. Carrillo requires to time to prepare a defense in light of the constitutional questions.

6. In addition, Mr. Ray has a definite jury trial setting on November 18, 2019 before

Senior United States District Court Judge the Honorable James A. Parker in Case No. 18-CR-4172 JAP.

7. Mr. Carrillo agrees with this continuance and will not be prejudiced by it. He is not currently in custody and is adhering to his conditions of release. His agrees that the time between the current setting and the continued trial should not be counted for purposes of the Speedy Trial Act.

8. Undersigned counsel affirmatively states that under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7), the ends of justice and the public interest will be served by granting this extension of time in which to file motions and a continuance of the trial. *See United States v. Hernandez-Mejia*, 406 Fed. App'x. 330, 338 (10th Cir. 2011) ("The Speedy Trial Act was intended not only to protect the interests of defendants, but was also 'designed with the public interest firmly in mind.'") (quoting *United States v. Toombs*, 574 F.3d 1262, 1273 (10th Cir. 2009)). A continuance of the trial date will allow for Mr. Carrillo's newly appointed counsel to prepare motions, evaluate the discovery, assess defenses, and prepare for trial. This motion is not predicated upon the congestion of the Court's docket.

WHEREFORE, Defendant Antonio Carrillo, by and through undersigned counsel, and the United States, respectfully requests that this Court continue the November 18, 2019 jury trial by 45 days.

Respectfully Submitted,

LAW OFFICES OF MARSHALL J. RAY, LLC

/s/ Marshall J. Ray
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November 2019, I filed the foregoing pleading via CM-ECF, causing all registered parties to be served.

/s/ Marshall J. Ray
Marshall J. Ray